THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16787 OF 2005

DATED: 15-12-2006

Between :

Cheerala Bapayya Panthulu .... Petitioner

And

1. The Special Deputy Collector, Tribal Welfare, Ramachandrapuram, East Godavari District;
   And 2 others. .... Respondents

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WRIT PETITION NO.16787 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the action of the Special Deputy Collector (Tribal Welfare), Ramachandrapuram in proceeding with LTRP.No.505 of 2005 as arbitrary and illegal and hit by principles of res judicata.

It is pleaded by the petitioner that he has been in possession and enjoyment of Ac.7-33 cents of land situated in Sy.No.70/2 of Byanapalli Village, Gangavaram Mandal. Alleging that the petitioner, who is a non-tribal, is in possession of the said land in contravention of the provisions of the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959, eviction proceedings were initiated earlier on a complaint made by the 3rd respondent herein. However, the said proceedings - LTRP No.411/80 (16/77) were rejected by the 1st respondent, which order has become final. Hence, it is contended by the petitioner that it is not open to the respondents to initiate proceedings in LTRP No.505/2005 for eviction on the very same grounds in respect of the very same land.

I have heard the learned Counsel for both the parties and perused the material on record.

The law is well-settled that the competent authority under Regulation 1 of 1959 may initiate fresh proceedings in respect of the very same land in case any fresh material is available and to arrive at an independent conclusion.

In SPECIAL DEPUTY COLLECTOR (TRIBAL WELFARE) v. DATLA VENKAPATHI RAJU[1], having considered an identical issue, it was held by the Division Bench that where the issue that arose for decision in the earlier proceedings and in the fresh proceedings is different and where the parties to the proceedings are different, the fresh proceedings cannot held to be illegal. In the said decision, the Division Bench has also accepted the view expressed in G. RAGHAVULU vs. AGENT TO GOVERNMENT[2] that the principle of

res judicata shall be applied with caution in dealing with a case arising under the Regulation meant for the protection of the tribes and if the proceedings were dropped earlier for the reason that the tribal could not produce sufficient evidence, it does not preclude a subsequent enquiry.

In the circumstances, it is a matter for enquiry basing on the facts and circumstances of the case and the proceedings in LTRP No.505 of 2005 cannot be quashed at the threshold. Therefore, a Writ of Mandamus as prayed for cannot be issued.

Accordingly, the Writ Petition is disposed of with a direction to the 1st respondent to proceed with the enquiry initiated in LTRP.No.505/2005 and pass appropriate orders in accordance with law. It is made clear that the 1st respondent shall take into consideration the findings already recorded in the earlier proceedings and shall afford a reasonable opportunity to the petitioner to putforth his version. The petitioner if he so choose is at liberty to submit fresh explanation together with the supporting material within four weeks from the date of receipt of this order. Till the proceedings in LTRP No.505 of 2005 are concluded, Status Quo obtaining as on today as to the nature and possession of the land in question shall be maintained.

Writ Petition is accordingly disposed of. No costs.

G. ROHINI, J.

Dt. 15-12-2006
gbs

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[1] 2002 (4) ALT 669 (D.B.)

[2] 1994 (2) An.W.R. 216